

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Submission And Handling Of Information Which May Be Entitled To Confidential Treatment

Proposed repeal: N.J.A.C. 14:32

Procedures For Determining The Confidentiality Of Submitted Information

Proposed Amendments: N.J.A.C. 14:1-12.1, 12.2

Authorized By: Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Connie O. Hughes and Jack Alter, Commissioners.

Authority: N.J.S.A. 48:2-12, N.J.S.A. 47:1A-1 et seq., and N.J.S.A. 52:27F-18

Calendar Reference: Exempt by virtue of 60 day comment period.

BPU Docket Number: [AX05050396](#)

Proposal Number: PRN 2004-

Submit comments by September 16, 2005 to:
New Jersey Board of Public Utilities
Kristi Izzo, Secretary
ATTN: BPU Docket Number: [AX05050396](#)
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The New Jersey Board of Public Utilities is proposing amendments to its rules regarding procedures for determining the confidentiality of submitted information, found at N.J.A.C. 14:1-12 (also known as Open Public Records Act rules or OPRA rules). The Board is also proposing to repeal existing rules governing the confidentiality of energy trade secrets at N.J.A.C. 14:32.

Under N.J.S.A. 52:27F-18, the Board is required to establish reporting requirements for certain types of energy information. N.J.S.A. 52:27F-18d requires the Board to establish procedures for handling confidentiality claims regarding energy information submitted to the Board under those reporting requirements, including trade

secrets. N.J.S.A. 52:27F-18d also exempts trade secrets submitted under N.J.S.A. 52:27F-18 from public disclosure under the Open Public Records Act.

Prior to the Board's adoption of the OPRA rules, the Board promulgated rules at N.J.A.C. 14:32 governing the confidentiality of energy trade secrets and other energy information, as required by N.J.S.A. 52:27F-18d. These rules, which are substantively identical to provisions in the OPRA rules, will expire on December 22, 2005. While energy trade secrets are exempt from public disclosure under N.J.S.A. 52:27F-18, the Board must have a procedure by which it accepts and evaluates a claim that specific information is an exempt trade secret. Rather than maintaining two separate sets of rules containing procedures for confidentiality claims, one for energy information and another for all other information submitted to the Board, the Board is proposing to consolidate these procedures in one chapter. Therefore, this proposal would amend the OPRA rules to enable the Board to utilize the OPRA procedures for all confidentiality claims, and would repeal N.J.A.C. 14:32.

The amendments proposed to N.J.A.C. 14:1-12.1(b) would specifically bring energy trade secrets or other energy information submitted under N.J.S.A. 52:27F-18 within the scope of the OPRA rules. Proposed new N.J.A.C. 14:1-12.1(f) would specify that the procedures in the OPRA rules would apply to determinations regarding the confidentiality of energy trade secrets or other energy information submitted under N.J.S.A. 52:27F-18. Finally, new definitions are proposed for "energy trade secret", "energy information", and "trade secret."

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and repeal will have a positive social impact in that they will consolidate and clarify the Board's treatment of energy information claimed as confidential. This will make it easier for the regulated public to understand and follow the rules.

Economic Impact

The proposed amendments and repeal will have a slight positive economic impact in that they will make it somewhat quicker and easier to understand and comply with the Board's rules regarding confidentiality of energy information.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

N.J.A.C. 14:1-12 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for these proposed amendments and repeal.

Jobs Impact

The Board does not expect these proposed amendments and repeal to have any effect on jobs in New Jersey. While the changes will likely make it easier for businesses to understand and comply with the Board's rules, the change is small enough so that it will not affect employment.

Agriculture Industry Impact

The Board does not expect these proposed amendments and repeal to have any effect on agriculture in New Jersey. These rules apply to information submitted by companies in the energy industry, and so will not apply to agriculture.

Regulatory Flexibility Statement

The proposed amendments and repeal will not impose any additional record keeping, reporting or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. There are some energy companies subject to the rules that may meet the definition of a small business. If anything, these amendments and repeal will slightly reduce the compliance burden for such businesses.

Smart Growth Impact

The Board anticipates that the proposed amendments and repeal will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." These rules apply uniformly Statewide and the Board does not expect that they will affect the location of future development. Therefore, the proposed amendments will not impact smart growth or the State Plan.

Full text of the chapter being repealed can be found in the New Jersey Administrative Code at N.J.A.C. 14:32.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

14:1-12.1 Scope

(a) (No change.)

(b) Any person or entity required to submit or who does submit to the Board any information pursuant to Titles 48 and 52 of the New Jersey Statutes or Title 14 of the New Jersey Administrative Code, which in the person's or entity's opinion constitutes trade secrets, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18, proprietary commercial or financial information, or information which if disclosed, would be likely to cause damage to either a competitive or bidding position or national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(c) - (e) (No change.)

(f) The Board shall use the procedures in this subchapter to implement its authority under N.J.S.A. 52:27F-18d to make determinations regarding the confidentiality of energy trade secrets and other energy information submitted to the Board pursuant to N.J.S.A. 52:27F-18d.

14:1-12.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Energy trade secret" means a trade secret, as defined herein, that pertains to the energy industry and is submitted to the Board pursuant to N.J.S.A. 52:27F-18.

...

"Energy information" means any statistic, datum, fact, or item of knowledge and all combinations thereof relating to energy, which is submitted to the Board pursuant to N.J.S.A. 52:27F-18.

"Trade secret" means the whole or any portion or phase of any scientific, technical or otherwise proprietary information, design, process, procedure, formula or improvement which is used in one's business and is secret and of value; and a trade secret shall be

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presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.